IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3078 OF 2004

IN

CRIMINAL APPEAL NO. OF 2004

Yusuf Tayyab Jummani .. Appellant

versus

Rasheed Ibrahim Memon & 2 ors. .. Respondents

...

Mr. A.G. Shaikh for the appellant.

None for the respondent nos.1 and 2.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 24th November 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the appellant. None appears for the respondent nos.1 and 2 though they are served. Shri Adsule appears for the State.

2. The appellant is challenging the judgement and

order passed by the JMFC, Jawahar dated 1st January 2004 dismissing the complaint filed by the appellant for want of prosecution. None appears for the respondent though they are served. The appellant has filed affidavit of service. Leave granted. Appeal is taken up for hearing forthwith.

3. The short question is whether the appellant had shown sufficient cause for not remaining present in the trial Court when the matter was called out. It is submitted by the appellant that respondent accused had never remained present in the Court and non bailable warrant was issued by the Court and thereafter the accused was arrested and produced before the trial Court. The complainant had remained present on all these dates. However, when the matter appeared on board on 1.1.2004, he had filed an application for adjournment. His application for adjournment was however refused. The learned counsel for the appellant has filed a copy of the roznama. After having perused the roznama, I am of the view that the complainant was diligent in pursuing the prosecution. However, the prosecution had remained absent continuously.

4. In my view, the trial Court is not justified

in dismissing the complaint merely because the complainant remained absent on one date. The impugned order is set aside and the appeal is allowed. Criminal Complaint is restored to the file. The Magistrate is directed to decide the case on merits within a period of one year.

V.M.KANADE, J